

### Remarks

The Office Action dated May 28, 2003 has been received and reviewed. Claims 3, 4, 8, 10-12 and 14-25 were withdrawn from consideration. Claims 1, 2, 5-7, 9 and 13 were rejected under 35 U.S.C. § 102(b) as being unpatentable over Besonen, et al. (U.S. Patent No. 5,307,753). Applicants have amended several claims and added several new claims in an effort to better define the invention and to place the pending claims in allowable form over the cited art of record.

Claims 7, 9 and 13 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite for citing the limitation of an elastic member which did not have antecedent basis. These claims have been amended to overcome the 35 U.S.C. § 112 rejections.

The Examiner stated that claims 1, 2, 5, 6, 7, 9 and 13 were anticipated by Besonen, et al. (U.S. Patent No. 5,307,753). Besonen, et al. was stated to provide a counterbalance to control a load having an elastic element 30 that at least partially counters a load, and a flexible extension limiter 25 that provides a stop which defines a fully extended position of the counterbalance and which counters loads applied to the counterbalance after the counterbalance is in a fully extended position. Besonen, et al. was also stated to provide a counterbalance with an elastic element as a spring and a flexible extension limiter as a material strap. The protective housing was stated to partially cover the elastic member and the flexible extension limiter and to include first and second tubes where the first tube is telescopically received by the second tube.

Besonen, et al. is directed to a water motion cushioning device which partially absorbs shock motions for use with marine or water equipment. Claim 1 has been amended to recite that the counterbalance is used with a tailgate assembly of a motor vehicle. The Besonen, et al. device is simply not analogous art for a tailgate stabilizer. Rather, the Besonen, et al. device is used in conjunction with movement of a boat or craft where extension of the spring cushions the effect of waves and/or larger shock waves. Cord 25 is a positive connector between sections 12 and 13 when the telescoping sections move longitudinally outward of each other. The cord 25 permits a direct linkage to a detached object. It appears that the cord's purpose is to serve as a positive connector between sections 12 and 13. It provides a direct linkage to an attached

object such as an anchor for retrieving the anchor from the water bottom or for pulling the boat from its moor position to a boarding position closer to the dock. The cord does not serve to counter a load after the counterbalance for a tailgate is in a fully extended position. Thus, the Besonen, et al. device is not used to counterbalance a load applied by a tailgate including an elastic element and a flexible extension limiter which defines a fully extended position for the counterbalance and absorbs any further loads applied to the counterbalance after it is in a fully extended position. It is also considered not to be obvious to use the device of Besonen, et al. in conjunction with a tailgate to counterbalance the loads applied to the tailgate.

Claims 26-34 have been added. Claim 26 calls for the flexible extension limiter of claim 1 to include at least two straps connected to each other. Claim 27 calls for the combination of a tailgate of a motor vehicle and a counterbalance comprising an elastic element that at least partially counters a load applied by the tailgate to the counterbalance assembly during movement of the tailgate to an open position. A flexible extension limiter provides a stop which defines a fully extended position of the counterbalance and which counters loads applied by the tailgate after it is in a fully opened position.

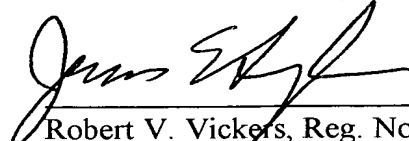
As previously stated, the Besonen, et al. device is not used in conjunction with a tailgate and thus does not anticipate claims 26-34.

Applicants therefore submit that the claims pending in the above-identified patent application are in allowable form and early notice to that effect is earnestly solicited.

Respectfully submitted,

FAY, SHARPE, FAGAN,  
MINNICH & McKEE, LLP

Date: 8/27/03

  
Robert V. Vickers, Reg. No. 19,504  
James E. Scarbrough, Reg. No. 47,056  
1100 Superior Avenue, Seventh Floor  
Cleveland, Ohio 44114-2518  
(216) 861-5582